

Missouri DMH Central Abuse and Neglect Investigations Unit

SUMMARY OF FIELDWORK PROTOCOL

5-02

INTRODUCTION

This protocol summarizes the standard operating procedures and guidelines used by the Department of Mental Health's Central Abuse and Neglect Investigations Unit. It has been developed to better apprise and prepare agencies and individuals as to what they might expect when they come in contact with members of this Unit during the course of an investigation. Please note that procedures may vary from this protocol in special situations where investigative judgment dictates modifications.

DMH Central Abuse and Neglect Investigations Unit

The Investigations Unit is a group of trained investigators located within the Department of Mental Health (DMH) Office of Quality Management. Their primary function is to conduct investigations of the most severe, infrequent or unusual incidents on behalf of the DMH.* They receive their investigation assignments from DMH senior leadership staff. They are charged to find and document facts that permit senior leadership to substantiate the presence or absence of abuse or neglect associated with an investigated incident. It is expected that the investigation and fact finding will be completed in the most professional and ethical manner; and in a manner that will withstand legal scrutiny if ever challenged in court. The investigation is objective without bias of innocence or guilt. All possible, reasonable leads will be explored. Findings may include identification of individual culpability, management problems, training needs, poor environments, regulation violations, and other issues. As a unit within the Office of Quality Management, investigators are also expected to communicate opportunities for system improvement when identified from data collected in individual or aggregate investigations.

In Missouri, mental health abuse and neglect investigations are guided by 630.167 RSMo, which requires initiation of an investigation within 24 hours. Timelines for investigations are established by specific DMH Operating Regulations. Additional procedures for processing abuse and neglect situations are detailed in the State's Code of State Regulations for licensed, certified or funded providers -- 9 CSR 10-5.200; and in the DMH Operating Regulations for state operations -- 2.205 for DMH operated facilities and 2.210 for DMH guidelines of processing abuse and neglect complaints for licensed, certified and funded providers. Part III of the DMH General Contractual requirements for providers and specific DMH licensure and certification regulations also address abuse and neglect investigations.

*Note that not all abuse and neglect allegations are investigated by the Central Investigations Unit. Most investigations are assigned to local DMH investigators associated with regional ADA/CPS/MRDD Division offices.

Confidentiality

Investigators are trained and held accountable for maintaining established confidentiality standards. All information obtained during the investigation shall not be communicated to others except in a legal and demonstrable business need to know. All press and media inquiries are referred to the DMH Public Affairs Director. Report and relevant information releases are guided by 630.167 RSMo, DMH Operating Regulations 2.205 (16) and 2.210 (13); and all such releases are coordinated through the DMH Office of General Counsel.

INVESTIGATION ELEMENTS**Initiation of Fieldwork**

Once an investigation has been assigned to the Central Investigations Unit, the Investigations Program Director will assign one or more investigators and other specialists as necessary to a case. The assigned investigator shall contact the administrator of the agency or their designee before or upon arrival on-site when beginning an investigation. The majority of investigations are announced to the agency by the investigator prior to arrival so that the setup of interviews and the accessing of records can be planned. In some cases, the investigator will arrive on-site unannounced. This can occur when travel and short timelines have prevented notice or when conditions exist that suggest that notice of investigation might compromise the collection of accurate investigative data; such as concerns that records might be altered, that witnesses might leave, that witnesses might be coached, or other significant factors.

Upon arrival at the agency, the investigator will meet with the administrator or designee, if possible, to coordinate the investigation and share with them the purpose of the investigation. The purpose of the investigation can be withheld when there is reason to believe that the sharing of this information may compromise the investigation. The complainant's identity is never divulged without their permission. The investigator shall follow the internal policy of the Unit regarding dress code. They shall be prepared to present photo identification and have available business cards for contact. They shall in all cases view the areas where incidents took place if possible.

Obtaining of documentation begins immediately for all cases. This may include in-person, phone, mail or fax requests for records. Identification of needed records is aided by using a tool referred to as the "Investigations Checklist" or "Incident Analysis." Obtaining private records may necessitate the use of the standard authorization for release of information. If there are problems obtaining private records with or without a release, 630.025 RSMo grants the Department Director the authority to issue subpoenas of witnesses and documents for inquiries and investigations. This request for subpoena shall be made of the Director of Investigations who will coordinate obtaining this executive subpoena. Obtaining records or testimony by this method may be used in the following examples: when there is an urgent need to obtain records without waiting for a

release; when there is no next of kin or guardian to provide a release, and a letter requesting the records has failed; when a hospital, ambulance service, or other entity refuses to honor a release; situations of non-cooperation.

Fieldwork may be done by local DMH investigators in coordination with the Central Office investigator. This fieldwork may include: taking written statements, collecting and preserving any physical evidence, obtaining releases, securing the scene, requesting third party information (police, hospital, ambulance records), taking photographs, taking names of witnesses, gathering identifying information (addresses and phone #'s), taking custody of policies and charts, arranging for physical examinations.

Cooperation

The speed and accuracy of an investigation is impacted positively by the degree of cooperativeness between the investigator and the agency personnel where an investigation is being conducted. The Central Investigations Unit begins each investigation with an expectation that all parties understand and perform their respective responsibilities in reporting and determining the facts of an incident.

Language found in both contracts and state regulations describe the nature of cooperation expected of contract providers and the penalties associated with failure.

- Part III of the DMH General Contract specifies, “41. The contractor SHALL allow the Department or its authorized representative to inspect and examine the contractor’s premises and/or records which relate to the performance of the contract at any time during the period of the contract and within the period specified herein for the contractor’s retention of records.” “42. The Department SHALL have access to its clients and client records without limitation. If access is denied or limited, the Department SHALL terminate payment from the day access is denied or limited.” “76. The contractor SHALL fully cooperate with all investigations conducted by the Department, or its agents, which relate, directly or indirectly, with the performance of this contract.”
- 9CSR 10-5.200 (4) specifies that all licensed, certified or funded programs by the Department “fully cooperate with law enforcement authorities and with department employees or employees from other agencies authorized to investigate the complaint. Failure to cooperate may result in contract termination or dismissal of the employee.”

Department of Mental Health employees have similar expectations of cooperation during investigations. Penalties for refusal to cooperate include dismissal as referenced in DMH Operating Regulation 2.205 (6). The penalty for refusal to testify is dismissal as specified in section 36.410 RSMo and DMH Operating Regulation 2.205 (8)(C).

It is imperative that no one attempts to influence or give the appearance of influencing the testimony of another. Instructing an interviewee on what to say prior to an interview or supervisors debriefing staff regarding interviews prior to completion of the investigation will be viewed as interference. If interference is suspected during an investigation, this interference shall be discussed with the agency leadership and a request for it to cease shall be given. All situations where an agency or an individual has interfered or failed to cooperate with an investigation will be noted in the final investigative report.

Any retaliation against an individual reporting or cooperating with an investigation is addressed in 630.167 RSMo “6. No person who directs or exercises any authority in a residential facility, day program or specialized service shall evict, harass, dismiss or retaliate against a patient, resident or client or employee because he or she or any member of his or her family has made a report of any violation or suspected violation of laws, ordinances or regulations applying to the facility which he or she has reasonable cause to believe has been committed or has occurred.” This is also addressed in DMH Operating Regulations 2.205 (17) and 2.210 (14) for department employees.

Interviews

Every attempt will be made to locate all possible persons with knowledge relevant to the investigation, whether they are employed by the facility or not. A structured written questionnaire may be used in some cases prior to interviews. Interviews shall be conducted in private and neutral locations.

- All employees have the right to be accompanied by legal counsel. State employees may have another employee of the facility accompany them in interview, [DMH Operating Regulation 6.005 (1) (I)]; Non-DMH employees may be accompanied by union representation such as a shop steward.
- Supervisory or administrative personnel are not appropriate to accompany an employee during an interview, as there may be a suppression of information due to this relationship.
- Group interviews are not appropriate as this is considered to not be a good faith effort to obtain the truth.
- Guardian permission shall be obtained prior to interview for those individuals who have a guardian. Parental or guardian permission shall be obtained prior to interview of an adolescent. The guardian or parent has a right to witness the interview if they wish.
- Any interviewee who allows any of the above to accompany them in interview shall be informed that in doing so their testimony is no longer considered “privileged information.”
- Anyone sitting in on interview is to only be an observer, not a participant. For example, legal counsel may consult with the interviewee, but they are not to ask or answer questions for the interviewee. Observers are subject to subpoena to testify.
- See preceding section titled “Cooperation.”

The investigator shall use the structured "Investigations Unit Interview" document to ensure adequate and consistent information is obtained during interview. Tape recording may take place during interview unless the interviewee objects; this refusal will be noted in the report. Tape recording is an important investigative tool in a number of situations. These situations may include: where there are concerns that false accusations may be made against the investigator at a later date by the interviewee; where the tenor of the environment appears hostile; where there is need to record extensive detail; where adequate note taking is not possible; where a recorded confession is possible, or other significant interviews. The tape recording is subject to release only if prior to the interview, the interviewee requests a copy of the tape as a condition of permission to allow the taping. In such cases, the interviewee must submit a completed "Request For Release Of Statement" and provide a blank cassette tape for copy.

In situations where the evidence indicates more likely than not that an individual committed an act and the individual is denying it, a structured behavioral analysis interview will be conducted. A behavioral analysis interview may also occur in other situations. If the behavioral analysis interview indicates deception, an interrogation will be performed. Interrogation techniques will follow legal guidelines. Investigators will not threaten nor will they make promises to an interviewee. Polygraph examinations may be requested of individuals primarily when deception cannot be determined or to support the weight of evidence.

Completion of Fieldwork

An exit interview will be conducted with the administrator or designee upon completion of the investigation unless there is a compelling reason not to do so. This exit interview will be a discussion of the significant findings of the investigation, as they are known at the time. A written report detailing findings of fact will be prepared and sent to the supervising DMH administrator for any further disposition.

CONCLUSION

The Department and the Investigations Unit are sensitive to the anxiety and fears that any abuse or neglect investigation prompts for involved agencies and individuals. The very nature of an allegation establishes an often perceived adversarial relationship. It is our intent and desire to go about collecting the required and relevant investigative data in as neutral and unobtrusive manner as possible. Our goal is to conduct an effective investigation as quickly as possible with minimal to no conflict or need for confrontation. We welcome comments and recommendations. Any questions, comments, or recommendations related to the investigation process may be directed to the Abuse and Neglect Investigations Director in Jefferson City at phone number 573/751-8420.